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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

CREIGHTON TAKATA, Individually and on
behalf of all others similarly situated,

Plaintiff,

v.

RIOT BLOCKCHAIN, INC. F/K/A,
BIOPTIX, INC., MICHAEL BEEGHLEY,
JOHN O'ROURKE, and BARRY HONIG,

Defendants.

Case No. 18-cv-2293 (GC) (RLS)

**REQUEST FOR JUDICIAL NOTICE
SUPPORTING BARRY C. HONIG'S
MOTION TO DISMISS**

Defendant Barry C. Honig ("Mr. Honig") respectfully requests that the Court take judicial notice, pursuant to Rule 201 of the Federal Rules of Evidence, of certain documents cited in his Memorandum in Support of his Motion to Dismiss Lead Plaintiffs' Consolidated Third Amended Class Action Complaint (the "**Complaint**" or "**TAC**"). Each of the referenced documents is attached to the accompanying Declaration of Robert D. Weber ("**Weber Decl.**").

Pursuant to Federal Rule of Evidence 201(b)(2), this Court may take judicial notice of facts that are "not subject to reasonable dispute" and that are "capable of accurate and ready

determination by resort to sources whose accuracy cannot reasonably be questioned.” Under Federal Rule of Evidence 201(d), this Court must take judicial notice “if requested by a party and supplied with the necessary information.”

1. The Court May Take Judicial Notice of SEC Filings.

Mr. Honig requests that the Court take judicial notice of the following documents that were filed with the Securities Exchange Commission (“SEC”) and uploaded to the SEC EDGAR database:

- Riot Blockchain’s (“**Riot**”) annual report on Form 10-K, filed with the SEC on April 17, 2018 (Weber Decl. Ex. A).
- Riot’s Form S-3, filed with the SEC on April 20, 2017 (Weber Decl. Ex. E).
- Riot’s Form S-3/A, filed with the SEC on July 19, 2017 (Weber Decl. Ex. F).
- Riot’s Form S-3/A, filed with the SEC on August 24, 2017 (Weber Decl. Ex. G).
- Riot’s Form S-3/A, filed with the SEC on September 25, 2017 (Weber Decl. Ex. H).
- Riot’s Definitive Proxy Statement on Schedule 14A, filed with the SEC on December 12, 2017 (Weber Decl. Ex. I).
- Riot’s Form S-3, filed with the SEC on January 5, 2018 (Weber Decl. Ex. J).
- Schedule 13D/A filed by Mr. Honig with the SEC on February 13, 2018 (Weber Decl. Ex. K).
- Riot’s current report on Form 8-K, filed with the SEC on February 3, 2020 (Weber Decl. Ex. L).

Courts routinely take judicial notice of SEC filings because their contents are inherently reliable. *See In re NAHC*, 306 F.3d at 1331, *citing Oran v. Stafford*, 226 F.3d 275, 289 (3d Cir. 2000) (taking judicial notice of public disclosure documents filed with SEC).

2. The Court May Take Judicial Notice of Historical Securities Prices.

Mr. Honig also requests that the Court take judicial notice of the following documents:

- A visual line chart representing a comparison of the price of Riot stock (represented by the red line) and Bitcoin (represented by the blue line) for the period October 3, 2017 through June 30, 2022, downloaded from www.barchart.com on July 17, 2022 (Weber Decl. Ex. B);
- A chart reflecting historical Bitcoin prices (BTCUSD) for the period June 30, 2016 through September 6, 2018, downloaded from <https://finance.yahoo.com/> on March 15, 2019 (Weber Decl. Ex. C);
- A chart showing the historical market prices of Riot's common stock (including when Riot operated under the names Venaxis and BiOptix, Inc.), for the dates June 30, 2016 through September 6, 2018, downloaded from <https://www.nasdaq.com/> on March 14, 2019 (Weber Decl. Ex. D).

Courts often taken judicial notice of historical reported market prices of securities in connection with motions to dismiss. *See, e.g., In re NAHC*, 306 F.3d 1314 at 1331 (finding no reversible error where district court took judicial notice of stock prices compiled by the Dow Jones news service); *Ieradi v. Mylan Lab., Inc.*, 230 F.3d 594, 600 n. 3 (3d Cir. 2000) (taking judicial notice of stock prices reported by Quotron Chart Services).

3. The Court May Take Judicial Notice of a Letter from the SEC.

Mr. Honig also requests that the Court take judicial notice of the following document:

- A true and correct copy of a letter received by Mr. Honig from the SEC on February 6, 2020 (Weber Decl. Ex. M).

Under the incorporation by reference doctrine, “a court may consider an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff’s claims are based on the document.” *Pension Ben. Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993). Plaintiff’s claims are based on this document in that Plaintiff asks the Court to infer scienter based on the SEC’s indication that it had opened an investigation into Riot and the further suggestion that the investigation remains ongoing. [TAC ¶ 235]. This document, authored by the SEC, states that the agency staff concluded its investigation and did not intend to recommend an enforcement action.

Dated: July 18, 2022

Respectfully submitted

/s/ Tyler E. Baker

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